

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

SEP - 17, 1995

CC Docket No. 92-297

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of:

Rulemaking to Amend Parts 1, 2, 21 and 25  
of the Commission's Rules to Redesignate  
the 27.5 - 29.5 GHz Frequency Band,  
to Reallocate the 29.5 - 30.0 GHz Frequency  
Band, to Establish Rules and Policies for  
Local Multipoint Distribution Service and  
for Fixed Satellite Services

To: The Commission

COMMENTS

DOCKET FILE COPY ORIGINAL

The law firm of Duncan, Weinberg, Miller & Pembroke, P.C. represents about one hundred state and local governmental entities across the United States in more than a dozen states. The firm has primarily represented municipal interests, for almost twenty-five years. The Firm represents municipalities on the cutting-edge of communications issues. The Firm herewith submits these comments, in response to the "Third Notice of Proposed Rulemaking" ("NPRM").<sup>1</sup>

1. The Commission should expeditiously establish the LMDS service. LMDS will provide needed competition in the local delivery of multi-channel

---

<sup>1</sup> The Commission extended the time for filing comments to September 7, 1995, by Order, DA 95-1866 (Released August 25, 1995).

video programming, plus a host of new communications services at the local level.

2. The primary thrust of these Comments is that, in establishing LMDS, the Commission consider the needs of the municipal community, by setting aside, reserving, devoting, giving priority to or otherwise taking steps to insure that LMDS frequency spectrum will be available for use by municipal interests and their local residents (including the children), when and as needed to meet their communications requirements.

3. The Commission has proposed a Band Segmentation Plan (NPRM, Para. 45) that provides 1,000 MHz of frequency spectrum for LMDS. LMDS would have Primary Service status, on a non-sharing basis, in 850 MHz of spectrum, between 27.5 GHz and 28.35 GHz. LMDS would have Primary Service status, but on a sharing basis, in 150 MHz of spectrum, between 29.1 GHz and 29.25 GHz.

4. To be commercially viable, LMDS interests will very likely need the entire 850 MHz segment for unrestricted use. However, the non-contiguous 150 MHz segment of spectrum offers tremendous potential for municipal interests, as well as for other non-commercial interests, who could not otherwise obtain a license for LMDS operation.

5. The history of the roll out of new technologies shows that municipal interests simply cannot, as a practical matter, consider obtaining a license. The FCC employs geographical licensing areas that are too vast, and the auction process produces start-up costs that price municipalities out of the marketplace. As each new technology comes along, municipalities, for one reason or another, find themselves unable to participate.

6. Meanwhile, the communications needs of the municipal community are increasing and becoming more complex. Municipalities find themselves having to meet these needs with less modern technologies or as a consumer in the marketplace purchasing services from a communications provider.

7. LMDS is a marvelous technology. Being terrestrially based, it is a feasible technology for an entity like a municipality to employ within its boundaries. It provides for multiple channels of diverse communications, with interactive capacity.

8. An opportunity exists for the Commission to provide municipalities with some spectrum to meet their needs and over which they would have some control. There is no single method for doing so; there are many ways to accomplish the end. However, this is the time to do it. It cannot be done at a later date.

9. The Commission may also want to take this opportunity to raise and address issues that have arisen in connection with other emerging technologies,<sup>2</sup> and which will no doubt arise at some point in time with LMDS. These issues are the use of public rights of way and federal preemption of state and local zoning, land use and other restrictions on location of towers and antennae. LMDS will require multiple transmitter sites and an antenna at every subscriber's site, which will prompt concerns at the local level, similar to those raised by earth stations and CMRS transmitters.

10. In the context of PCS, the industry was fully aware from the beginning of the existence of local land use regulations. Yet, the industry waited until after the rulemaking proceedings were over and the auction process had begun to complain that these regulations might inhibit their ability to roll out a service for which they had bid very high prices.

11. Local regulations exist in all localities. They concern valid issues of health and safety, as well as land use. Local officials will work very cooperatively with the LMDS industry to insure rapid deployment of this new technology. It is in the

---

<sup>2</sup> The Commission has separate on-going proceedings about satellite earth stations and CMRS towers (IB Docket No. 95-59 and RM-8577).

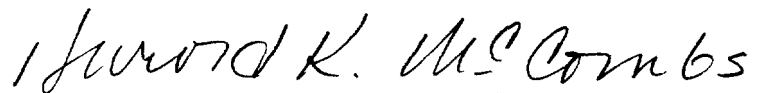
interest of municipalities, their businesses, and their residents to do so. Local officials, however, resent being faulted for exercising their long-standing established jurisdictional obligation to protect the public interest.

12. LMDS operators may have to obtain franchises if they intend to use public property to provide a service. And they must pay for that use. The franchise serves an important public policy purpose: to provide a means of acquiring the best service competition can provide, while controlling the number and manner of utility and service installations on public property and rights-of-way, in order to limit nuisance to the people and also to preserve the local area and environment for future generations. The franchise also provides a benefit to the locality which suffers the inconvenience of the physical incursion on public property for the provision of services: a franchise fee, paid directly to the local governmental entity, for the continued use of the public resources. In this way, all citizens are compensated by the entity deriving a benefit from use of what belongs to all.

13. Public property belongs to the public. Private interests must pay to use that public property. At the same time, municipalities need to have the opportunity to participate in meaningful ways in

emerging technologies. In light of these two requirements -- participation in LMDS technology and protection of public rights of way -- the Commission should consider and address at this time these critical interests of the thousands of municipalities that will be affected by this proceeding.

Respectfully submitted,



Harold K. McCombs, Jr.

Janice L. Lower

Barry F. McCarthy

Michael R. Postar

Tanja M. Shonkwiler

September 7, 1995

**DUNCAN, WEINBERG, MILLER & PEMBROKE, P.C.**

1615 M Street, N.W.

Suite 800

Washington, D.C. 20036

202-467-6370

FAX 202-467-6379